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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
ALBERT ZUNIGA,  
  
Defendant.

NO. CR-08-2097-LRS  
  
**ORDER DENYING MOTION TO  
DISMISS**

**BEFORE THE COURT** is the Defendant's Motion To Dismiss (Ct. Rec. 126). This motion was heard without oral argument. Defendant's motion seeks dismissal of the Indictment pursuant to the government's alleged failure to provide pertinent and necessary information to the Defense prior to trial.

On March 20, 2009, Defendant was found not guilty by a jury to the charge of Aiding and Abetting Postal Robbery in violation of 18 U.S.C. § 2241 and 18 U.S.C. § 2 as charged in the Indictment. A mistrial was declared on Count 1 of the Indictment, charging Conspiracy to Commit Robbery of Mail, Money or Other Property (Ct. Rec. 124).

Defendant suggests outrageous government conduct in that the government allegedly withheld potentially exculpatory evidence in violation of his 6<sup>th</sup> Amendment rights. Specifically, Defendant argues that

1 the government failed to disclose that Raymond Pedroza, a government  
2 witness at trial: 1) was in treatment for marijuana abuse; 2) had a  
3 lifelong addiction to marijuana; 3) had undergone drug testing by the  
4 Postal Service; and 4) the Postal Service knew of Pedroza's drug abuse  
5 and had been drug testing him while he was an informant.

6 The government indicates that it has fully provided discovery on an  
7 open file basis to defense counsel. Ct. Rec. 129 at 10. For the reasons  
8 hereafter set forth based on a totality of the circumstances to date, the  
9 Court finds that the government did not withhold information from the  
10 defendant.

11 Before trial, the government had disclosed that Pedroza had  
12 previously possessed marijuana and paraphernalia to ingest marijuana  
13 based on a prior conviction. At trial and before the jury, Pedroza  
14 admitted that he had ingested marijuana in the past and that he had  
15 attended Merit, a drug treatment facility. Counsel for the defense was  
16 therefore able to use the information before the jury and to argue its  
17 significance. Additionally, there is no allegation that Pedroza was  
18 smoking marijuana or under the influence when he spoke with the  
19 defendant. For instance, although the Postal Inspectors never subjected  
20 Pedroza to any type of drug testing, they met with and interviewed  
21 Pedroza on multiple occasions. Pedroza did not appear to show signs or  
22 symptoms of a drug addict. According to the Postal Inspectors, Pedroza  
23 was able to effectively communicate, did not appear to have symptoms of  
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